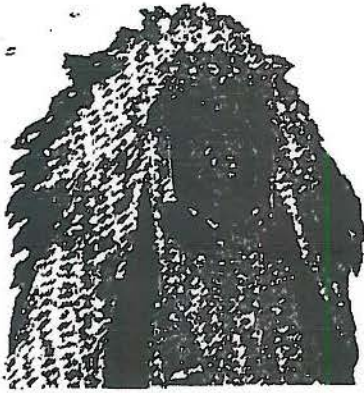


GENERAL COUNCIL  
and  
BOARD OF TRUSTEES



CONFEDERATED TRIBES  
of the

*Umatilla Indian Reservation*

P.O. Box 638  
PENDLETON, OREGON 97801  
Area Code 541 Phone 276-3165 FAX 276-3095

February 11, 2005

Benjamin Grumbles  
Assistant Administrator  
Office of Water  
U.S. Environmental Protection Agency  
Ariel Rios Building - - 4101M  
1200 Pennsylvania Ave. NW  
Washington, D.C. 20460

Dear Mr. Grumbles;

On behalf of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) I am requesting your assistance and intervention in a water quality standards matter that will have direct impact on the health risks of the people of my tribe. The CTUIR maintain fishing and other rights reserved in the Treaty of 1855 (12 Stat. 945) with the U.S. Government. Tribal members exercise their rights vigorously for economic, cultural and subsistence purposes. Additionally, our tribal government has a long-standing excellent relationship with both Environmental Protection Agency (EPA) Region 10 and with the State of Oregon.

The problem is that in July, 2004, the Oregon Dept. of Environmental Quality submitted to EPA proposed water quality standard revisions for chemical toxins that are based upon a fish consumption rate of 17.5 grams per day. While a rate of 17.5 g/day meets the minimum recommended fish consumption rate in the *EPA Methodology for Deriving Ambient Water Quality Criteria* 2000, in choosing it, Oregon DEQ ignored data from a local, geographically appropriate fish consumption survey of our own tribal members (*A Fish Consumption Survey of the Umatilla, Nez Perce, Yakama, and Warm Springs Tribes of the Columbia River Basin 1994*). Tribal member fish consumption rates are as high as 20 times the rate recommended by Oregon. Oregon's own data shows that about 82% of tribal members are not protected from substantial increased risk of cancer and non-cancer disease.

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TREATY JUNE 9, 1855 ♦ CAYUSE, UMATILLA AND WALLA WALLA TRIBES

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You may be aware of the ongoing efforts of the CTUIR and (EPA) Region 10, led by Mike Gearheard, to negotiate a resolution to this problem. Since 2003 we have attempted to compel DEQ to recognize the human health impact of these standards on our tribal members, and to work with us and EPA Region 10 to adopt and submit a more protective fish consumption rate. Our efforts to date to obtain this commitment have failed. We now face the imminent deadline of February 15, 2005 when the revised standards will go into effect by default and DEQ will begin to issue NPDES permits based upon the unprotective toxics standards.

Our bottom line Mr. Grumbles, is that these proposed standards are discriminatory. They are inconsistent with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§2000d to 2000d-7). DEQ's standards as submitted do not provide equal or adequate protection to known tribal populations of high fish consumers in the State of Oregon. According to the record, Oregon DEQ adopted and proposed these standards knowing full well that they would result in a predicted substantial increase in the incidence of cancer and non-cancer disease in the majority of CTUIR fish consuming members. For that reason we opposed Oregon DEQ's decision to adopt and submit them to EPA Region 10. For the same reasons, EPA Region 10 cannot approve these standards and they cannot "not disapprove" them. To do either would discriminate against CTUIR members and in our opinion many other fish-consuming cultures in Oregon.

I respectfully request that you support disapproval of Oregon's water quality standards and criteria for toxics. We are relying on EPA as the tribe's federal trustee to ensure that the human health issues raised by this water quality standards submission are addressed responsibly - I am asking for equal and adequate human health protection for my people. I would like to schedule a conference call with you for next week to discuss how we can work together to protect CTUIR people and accomplish timely resolution of this issue. Kathleen Feehan (Water Quality Policy Analyst, 541-966-2357) of my staff will be able to assist with scheduling a call. Thank you for your personal attention to our request.

Sincerely,



Antone C. Minthorn, Chairman  
Board of Trustees

DNR:epg:ktf

cc: Mike Gearheard  
Socorro Rodriguez  
CTUIR Board of Trustees  
Carol Jorgensen  
Chairs - Yakama Indian Nation, Nez Perce Tribe, Warm Springs Tribe.  
Columbia River Intertribal Fish Commission Executive Director

Attachments: ATNI resolution; Timeline of interactions with Oregon

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January 27, 2005

Mike Gearheard  
U.S. EPA Region 10  
Office of Water  
1200 Sixth Avenue  
Seattle, Washington 98101

Dear Mike;

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) appreciates your personal participation and leadership in our ongoing consultation concerning the Oregon Water Quality Criteria for toxics which are based upon a fish consumption rate known not to be protective of tribal people.

Since you met with the Board of Trustees in August 2004 little progress has been made. We have yet to receive any commitment from ODEQ to use a fish consumption rate that acknowledges higher rates of tribal fish consumption. ODEQ's revised toxic criteria will go into effect on February 15, 2005 unless they are disapproved by EPA. If this occurs then ODEQ will begin issuing NPDES permits using criteria that are not protective of tribal people. We believe such an outcome is unacceptable and does not provide equal or adequate protection to known tribal populations of high fish consumers. For legal and procedural reasons, the CTUIR requests that you take one of two actions to prevent ODEQ's proposed inadequate toxic criteria from going into effect.

- 1) Disapprove the Oregon Department of Environmental Quality July 8, 2004 submission of Water Quality Standards (OAR 340-041) Toxics Criteria prior to February 15, 2005.
- 2) Obtain before February 15, 2005 a written commitment that the ODEQ will delay beyond February 15, 2005 implementation of the fish consumption rate and related criteria for toxic pollutants, until they revisit the issue with the Environmental Quality Commission and determine whether or not Oregon will revise this portion of the proposed standards package.

As you know the CTUIR has, since 2003, objected to the use of the Oregon Department of Environmental Quality (ODEQ) proposed fish consumption rate of 17.5 grams per day because

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**TREATY JUNE 9, 1855 ♦ CAYUSE, UMATILLA AND WALLA WALLA TRIBES**

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in our opinion it does not provide equal or adequate protection to members of the CTUIR. As I know you are aware, the Columbia River Intertribal Fish Commission fish consumption survey, conducted in partnership with EPA, documents fish consumption rates that are up to 20 times higher than the 17.5 grams/day rate. Choosing to ignore this data in regulatory decisions leaves tribal people at significant risk. ODEQ acknowledged the concern of the CTUIR in their July 8, 2004 standards submittal letter to John Iani. "ODEQ acknowledges that this fish consumption rate is a source of concern to stakeholders including Columbia River tribes (especially the Confederated Tribes of the Umatilla). ODEQ will continue to work with the tribes and other stakeholders to address these concerns."

The Board of Trustees has consistently stressed to both EPA and ODEQ that we consider this issue to be of the highest order of significance. We sincerely hope that we can negotiate a solution that raises the fish consumption rate in ODEQ's standards and provides sufficient protection to CTUIR members. This however will require what the CTUIR has been attempting to obtain since 2003, a commitment by ODEQ to negotiate in good faith a resolution that will provide adequate and fair protection of tribal people.

Sincerely,

  
Antone C. Minthorn, Chairman  
Board of Trustees

cc: Stephanie Hallock  
David Reese  
Mike Carrier  
MardiLyn Saathoff  
CTUIR Board of Trustees  
Socorro Rodriguez  
Kathleen Feehan  
Rick George  
Chris Burford  
Olney Patt, Jr.

## **2005 Winter Conference Portland, Oregon**

### **RESOLUTION #05 - 08**

**"REQUESTING THAT THE U.S. ENVIRONMENTAL PROTECTION AGENCY  
DISAPPROVE OREGON'S WATER QUALITY STANDARDS  
BASED ON AN INADEQUATE FISH CONSUMPTION RATE  
THAT FAILS TO PROTECT TRIBAL PEOPLE"**

### **PREAMBLE**

We, the members of the Affiliated Tribes of Northwest Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian treaties, executive orders and the federal Trust Responsibility, and benefits to which we are entitled under the laws and Constitution of the United States and several states, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution:

**WHEREAS**, the Affiliated Tribes of Northwest Indians (ATNI) are representatives of and advocates for national, regional, and specific tribal concerns; and

**WHEREAS**, the Affiliated Tribes of Northwest Indians is a regional organization comprised of American Indians in the states of Washington, Idaho, Oregon, Montana, Nevada, Northern California, and Alaska; and

**WHEREAS**, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of Affiliated Tribes of Northwest Indians; and

**WHEREAS**, since time immemorial, our economy, culture, religion and way of life have been centered around our fishing, hunting and gathering resources, and the lands and waters on

**AFFILIATED TRIBES OF NORTHWEST INDIANS****RESOLUTION # 05 - 08**

which they depend, and yet their health and well-being have suffered greatly as a result of non-Indian activities and actions; and

WHEREAS, the damage to and degradation of many of these resources has in turn caused substantial harm to tribal people and communities and has impacted our inherent tribal sovereignty, which is based in part on the free exercise of our rights to fish, hunt and gather, and the United States has a duty, based on treaties, executive orders, the federal Trust Responsibility and numerous court opinions, to ensure that those rights are honored; and

WHEREAS, tribal natural and cultural resources have been significantly harmed by the production and dissemination of large amounts of toxic contaminants and other pollution from sources in the United States, Canada, and beyond; and

WHEREAS, varying levels of toxic contaminants have been found in lakes, rivers, streams and in the fish (both migratory and resident) that inhabit these waters throughout the Columbia River Basin; and the presence of such contaminants has been extensively and irrefutably documented by tribal resource agencies and organizations, the U.S. Environmental Protection Agency (EPA), other federal agencies, state pollution control agencies and others; and

WHEREAS, salmon, resident fish, wildlife, plants, water, and other natural and cultural resources are essential elements of our culture, economy, religion and way of life, and harm to them harms us; and

WHEREAS, tribal people use, enjoy, consume and otherwise rely on these resources far more than non-tribal people; for example, consuming salmon at up to twenty times the average rate of non-Indian residents, placing us at greater risk of exposure to toxic contaminants; and

WHEREAS, the Oregon Department of Environmental Quality (DEQ) and the Environmental Quality Commission (EQC) were informed of, and were fully aware and knowledgeable of, higher fish consumption rates for tribal people, but nevertheless chose to disregard them when they developed and approved revised toxics water quality standards; and

WHEREAS, the EQC approved such inadequate standards that fail to account for tribal fish consumption and thus fail to protect tribal people, in May, 2004, and claimed that such standards will become effective on February 15, 2005, unless EPA disapproves them as it is authorized to do pursuant to the federal Clean Water Act; and

WHEREAS, the Confederated Tribes of the Umatilla Indian Reservation have formally requested that EPA disapprove Oregon's water quality standards based on their incorporation of an insufficient fish consumption rate that disregards tribal health; and

WHEREAS, by enacting such standards Oregon will allow additional toxic contaminants into the environment at levels that will perpetuate and increase threats to tribal people, subjecting them to disparate impacts prohibited by Title VI of the Civil Rights Act of 1964 and contrary to EPA's own Environmental Justice Policy; and

**AFFILIATED TRIBES OF NORTHWEST INDIANS****RESOLUTION # 05 - 08**

**WHEREAS**, the Affiliated Tribes of Northwest Indians, in Resolution #03-84, "Protecting Columbia River Basin Fish from Toxic Contaminants and Other Pollution," dated September 25, 2003, resolved, among other things, that "the United States and the individual states make every effort to strengthen existing laws and regulations so as to reduce or more strictly limit the creation and dissemination of toxic and other contaminants"; now

**THEREFORE BE IT RESOLVED**, that the Affiliated Tribes of Northwest Indians respectfully requests that Oregon Governor Ted Kulongoski take an active role and personally intervene to correct the mistakes made by the DEQ, and consider directing the DEQ to withdraw its deficient revised water quality standards and work with EPA and the affected tribes to resolve this issue in a manner more respectful of tribal rights and health; and

**BE IT FINALLY RESOLVED**, that the Affiliated Tribes of Northwest Indians request that the U.S. Environmental Protection Agency disapprove Oregon's water quality standards and pursue efforts, in conjunction with Oregon and the affected tribes, to develop and adopt standards based on a fish consumption rate that more accurately represents that of tribal people, and thereby follow its Environmental Justice Policy and fulfill its Trust Responsibility to safeguard tribal rights, interests, and trust assets.

**CERTIFICATION**

The foregoing resolution was adopted at the 2005 Winter Conference of the Affiliated Tribes of Northwest Indians, held at the Embassy Suites Hotel Portland Airport in Portland, Oregon, on February 10, 2005, with a quorum present.

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Ernest L. Stensgar, President

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Norma Jean Louie, Secretary

**Timeline of the Confederated Tribes of the Umatilla Indian  
Reservation Consultations about Oregon Water Quality Standards  
Criteria for Toxics and Fish Consumption Rate**

July 25, 2003	Letter to EPA requesting consultation on OR water quality standards revisions.
August 20, 2003	CTUIR staff meet with DEQ staff, communicate concerns that fish consumption rate in OR proposal not protective of tribal people. Request government to government consultation consistent with SB 770.
August 2003	DEQ Telephone communication to CTUIR staff that there would be no opportunity for consultation beyond public comment period.
August 29, 2003	Comment letter submitted to DEQ on Water Quality Standards Revisions. Among comments objection to fish consumption rate for toxics criteria.
May 20, 21, 2004	DEQ presents revised standards to Environmental Quality Commission. Commission approves. Some members express concern about low fish consumption rate. Armand Minthorn submits "public comment" tribal concerns.
July 8, 2004	DEQ submits standards revisions to EPA for approval or disapproval.
August 5, 2004	CTUIR Les Minthorn and staff meet with EPA Mike Gearheard, Socorro Rodriguez and staff. Begin consultation on OR standards.
September 3, 2004	EPA Mike Gearheard meets with CTUIR Board of Trustees.
September 13, 2004	Conference call meeting between CTUIR staff, EPA and DEQ. DEQ won't clarify if they are considering revising standards.
October 11, 2004	Letter from Antone Minthorn to EPA summarizing points of understanding and principles for progress from Board of Trustees meeting with EPA.
November 3, 2004	Letter from EPA Mike Gearheard to both CTUIR staff and DEQ staff summarizing call and identifying areas for further work.
December 22, 2004	Letter from EPA Mike Gearheard to CTUIR Board of Trustees - confirming EPA responsibility to consult, EPA guidance on fish consumption rates, 6 -9 month time frame for resolution, resolution must address real solutions, resolution may include concurrent efforts.
January 20, 2005	EPA Mike Gearheard, Socorro Rodriguez and staff, CTUIR staff, and DEQ staff meeting. DEQ won't clarify if they are considering revising standards. Tasks developed to help understand effects of potential standards changes.
February 2, 2005	CTUIR - Oregon Government to Government Meeting. CTUIR requests intervention of Governor's Office in standards issue, sites concerns for tribal member health impacts. DEQ states decision to disapprove standards or raise fish consumption rate resides with EPA.
February 15, 2005	DEQ revised standards become active, will be applied for permitting and other purposes under state law unless EPA disapproves.